SUPREME COURT, U. S.

JUL 7 1975

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

October Term, 1975

No. 75-51

JERRY CHVOSTA,
Petitioner,

vs.

TOWNSHIP OF BAINBRIDGE, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Court of Appeals for the Eleventh Appellate District of Ohio

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Case A—Trial Court No. 19,029
Appellate Court No. CA 555
Supreme Court No. 73-947

Case R—(Refiled Case A) Trial Court No. 73-M-505
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Supreme Court of Ohio No. 74-1107

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Supreme Court of the United States

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Eleventh Appellate District of Ohio

OPINIONS BELOW

The Judgement Entry of the Geauga County Court of Common Pleas in Case A and dated October 11, 1972 is printed in the Appendix herein.

The Judgement Entry and Announcement of Decision of the Court of Appeals for Geauga County is not officially reported and is printed in the Appendix herein for Case A above. (See Legend.)

The Judgement of the Supreme Court of Ohio dismissing the appeal in Case A is printed in the Appendix herein.

The Ruling of the Court and Judgement of the Geauga County Court of Common Pleas in Case R (refiled case) is printed in the Appendix herein.

The Announcement of Decision and Judgement Entry of the Geauga County Court of Appeals in Case R (No. 601) is not officially reported and is printed in the Appendix herein.

The Judgement of the Supreme Court of Ohio dismissing the appeal in Case R (refiled case) is printed in the Appendix herein.

The order of the Supreme Court of Ohio denying petitioner's motion for rehearing in Case R (No. 74-1107) is printed in the Appendix herein.

JURISDICTION

The order of the Supreme Court of Ohio denying petitioner's motion for rehearing was made and entered on April 14, 1975 and an amended notice of appeal was filed on May 14, 1975 with copy thereof to opposing counsel.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257 (3) and timely filed within the required 90 days.

QUESTIONS PRESENTED

1. Without hearing any witnesses or entertaining evidence, is it due process of law to grant defendant's motion to dismiss on grounds subsequently found inapplicable by the appellate court?

2. Is it due process for the appellate court to sustain the dismissal not directed to the issue and unduly restrictive of Plaintiff's rights?

3. On refile of the case is it a denial of due process to dismiss on grounds of lack of causes of action when petitioner had refiled his original cause of action and added a second without giving him an opportunity to establish his case?

4. Is it a denial of due process to entertain jurisdiction of a complaint against the same board of trustees when filed by 400 petitioners and deny hearing to an individual for the same cause of action?

5. Is it denial of due process to ignore petitioner's request for a jury trial and determination of damages of a second cause of action?

CONSTITUTIONS

United States Constitution, Amendment XIV:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. . ."

Constitution of Ohio:

Article I, Section 1 of the Ohio Constitution guarantees citizens their right to protect their property.

Article I, Section 16 is entitled Redress in Courts: "All Courts shall be open and every person for an injury

done him in his land, goods, person or reputation, shall have remedy by due process of law, and shall have justice administered without delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law."

Article I, Section 19, Private Property Inviolate, Exception: "Private property shall ever be held inviolate but subservient to the public welfare . . . ."

STATEMENT OF THE CASE

This case was refiled under the "savings statute" O.R.C. 2305.19 as numbered under LEGEND. The Appellate Court has based its ruling on the original case and it is incorporated herein by reference. The original case will be referred to as Case A and the refiled case as Case R.

Petitioner is the owner of 173 acres of land in Bainbridge Township, Ohio, continuously since 1940, 80 acres of which have been zoned commercial since 1948 when township zoning was first adopted and 93 acres zoned as residential.

Case A originated when the Bainbridge Township Trustees voted to adopt Resolution Z69M as an amendment to change the zoning of the 80 acres from general commercial to residential after the required hearings and recommendations of the Geauga County Planning Commission which recommended against rezoning to residential as it was "doubtful that residential development would or could take place throughout", and the Bainbridge Township Zoning Commission had voted unanimously that the said 80 acres should remain zoned as general commercial.

Other neighboring property owners and the petitioner were against rezoning the 80 acres to residential and except for the trustees, there were no proponents for residential.

Petitioner contends that said trustees changed the zoning arbitrarily, confiscatorily and capriciously in violation of the owner's rights and constitutional guarantees and due process of law and before the expiration of the 30-day period preceding the effective date of the Z69M Resolution, Petitioner filed an action in the Geauga County Court of Common Pleas seeking to enjoin said trustees from putting into effect the change of zoning from general commercial to residential.

Case A was dismissed without a hearing on the merits on a motion to dismiss by counsel for defendants. The Judgement Entry filed Oct. 11, 1972 reads: "Defendant's Motion to dismiss for want of jurisdiction is hereby granted for the reason that Plaintiff has failed to exhaust his administrative remedies by applying for a zoning or building permit. In arriving at this decision the Court had considered *Espy v. Montgomery Village* (1971), 30 Ohio App. 2d 65, reported in the Ohio Bar, May 22, 1972 edition and the cases cited therein".

Petitioner appealed Case A to the Court of Appeals Eleventh District which held that Plaintiff did not have to apply for a building permit, but upheld the dismissal by holding plaintiff did not allege a justiciable controversy.

Case A was appealed to the Ohio Supreme Court on constitutional rights, but the Supreme Court refused jurisdiction.

Case R was filed on Oct. 10, 1973 (refiled Case A) within a permissive one-year period and in addition to the remedies of Injunction and damages petitioned for

in Case A, Writ of Mandamus, corrected damages and jury trial are requested. Also the Township of Bainbridge was added as party defendant.

On Dec. 12, 1973 the trial court heard Defendants' Motion to Dismiss for failure to state a cause of action which was granted and judgement entry was journalized on Jan. 8, 1974. In substance the court said: "Respondents' Motion to Dismiss for failure to state a cause of action is granted at Relator's costs".

On Feb. 6, 1974 Plaintiff filed a notice of appeal and brief on April 8, 1974 to the Court of Appeals, Eleventh District which set hearing and heard the case on May 16, 1974 and Defendants' counsel had not yet filed his answer. The Court granted defendant leave to file his answer to which Appellant filed his reply.

On Sept. 16 the Court of Appeals rendered its Announcement of Decision affirming the trial court's judgement. Plaintiff filed a timely Motion for Reconsideration which was denied on October 22, 1974 and Journal Entry filed on October 24, 1974.

Petitioner filed a Notice of Appeal to the Supreme Court of Ohio on Nov. 25, 1974 which refused jurisdiction on Feb. 28, 1975 with journal entry of March 17, 1975.

Petitioner filed a timely Motion for Rehearing which was denied with journal entry dated April 14, 1975.

On May 14, 1975 an Amended Notice of Appeal to the United States Supreme Court was filed with copy to Defendants' counsel.

REASONS FOR ALLOWING THE WRIT

1. Petitioner is entitled to a hearing on the merits before a jury as requested in his Complaint and guaranteed by the "due process" clause of the XIV Amendment and Article I, Sections 1, 16 and 19 of the Ohio Constitution.

2. Petitioner has alleged several causes of action, namely arbitrary unconstitutional rezoning of his property and also malfeasance, misfeasance and non-feasance by the trustees.

ARGUMENT

The most recent authority in support of Petitioner's case was the unanimous decision of the U. S. Supreme Court in the Kent State University case entitled *Scheuer et al. v. James Rhodes et al.* (1974), 94 Sup. Ct. 1683. Here the Court said in Syllabus 1.: "The Eleventh Amendment does not in some circumstances bar an action for damages against a state official charged with depriving a person of a federal right under color of state law, and the District Court acted prematurely and hence erroneously in dismissing the Complaints as it did without affording petitioners any opportunity by subsequent proof to establish their claims".

The Court said in Syllabus 2.: "The immunity of officers of the executive branch of a state government for their acts is not absolute but qualified and of varying degree, depending upon the scope of the discretion and responsibilities of the particular office and the circumstances existing at the time the challenged action was taken".

In its deliberation the Court said, "Moreover it is well established that, in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegation of the complaint should be construed favorably to the pleader. In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief—*Cooley v. Gibson*, 355 U.S. 41, page 45 (1957)".

The Petitioner's appeal brief and 16 assignments of error are supported by 14 items of proffered evidence on file. The Appellate Court did not render its opinion in accordance with Rule 12(A) of the Ohio Rules of Appellate Procedure.

Rule 12(A) provides in part: "All errors assigned and briefed shall be passed upon by the Court in writing, stating the reasons for the Court's decision."

On May 30, 1975 the same trial court of Geauga County assumed jurisdiction of 400 petitioners seeking to remove from office the same board of Bainbridge Township Trustees for the same charges of malfeasance, misfeasance and non-feasance, an example of denial to petitioner the equal protection of the laws guaranteed by the XIV Amendment, for, if they had a cause of action, then petitioner has a cause of action.

It is necessary that jurisdiction in this case be ordered and discovery allowed so that Petitioner can perfect his allegation of malfeasance whereby the trustees entered into a conspiracy to defraud the property owner of his property in return for substantial monies made available

as laundered bribes, but patently treated as gifts and gratuities, using and misusing the zoning power therefor.

Petitioner has already been denied the right of deposition of one of the trustees on motion to the Appellate Court.

A recent Cuyahoga County Common Pleas Court Case No. 916020, not yet reported, has held as unconstitutional, rezoning from commercial to residential on grounds similar if not duplicative of Petitioner's, which is another example of denial of equal protection, for, if they had a cause of action, then Petitioner has a cause of action.

CONCLUSION

For the foregoing reasons this Court should reverse the decision of the Ohio Appellate Court, Eleventh District, and remand this case so as to permit Petitioner to proceed with discovery and proof in connection with his claims.

Respectfully submitted,

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Of Counsel:
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APPENDIX

JOURNAL ENTRY IN THE COURT OF COMMON PLEAS

(Dated October 11, 1972)

Case No. 19029

COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

JERRY CHVOSTA,
Plaintiff,

vs.

LLOYD ADAMS, etc., *et al.*,
Defendants.

JUDGEMENT ENTRY

Defendant's Motion to Dismiss for Want of Jurisdiction is hereby granted for the reason that the Plaintiff has failed to exhaust his administrative remedies by applying for a zoning or building permit. In arriving at this decision the Court had considered *Espy vs. Montgomery Village*, (1971) 30 Ohio App. 2d 65, reported in the Ohio Bar, May 22, 1972 edition, and the cases cited therein.

JUDGE ROBERT B. FORD

JOURNAL ENTRY IN THE COURT OF APPEALS

(Filed July 16, 1973)

Case No. 555

COURT OF APPEALS OF OHIO
ELEVENTH DISTRICT, GEAUGA COUNTY

JERRY CHVOSTA,
Appellant,

vs.

BAINBRIDGE TOWNSHIP TRUSTEES, *et al.*,
Appellees.

JOURNAL ENTRY

This cause came on to be heard upon the record in the Trial Court, and was briefed and argued by counsel for the parties.

Upon consideration whereof, this Court finds no error prejudicial to the Appellant and, therefore, the judgement of the Trial Court is affirmed. Each assignment of error was reviewed by the Court and disposed of as set forth in this Court's *Announcement of Decision.*

It is ordered that Appellee recover of Appellant the costs herein taxed.

This Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Trial Court to carry this judgement into execution. A certified copy of this entry shall con-

stitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

GEORGE M. JONES, *Judge*
ROBERT F. COOK, *Judge*

DECISION OF THE COURT OF APPEALS

(Dated July 16, 1973)

Case No. 555

COURT OF APPEALS OF OHIO
ELEVENTH DISTRICT, COUNTY OF GEAUGA

JERRY CHVOSTA,
Appellant,

vs.

LLOYD ADAMS, *et al.*,
Appellees.

ANNOUNCEMENT OF DECISION

This cause came on to be heard upon the record in the Trial Court, and was briefed and argued by counsel for the parties. Upon consideration whereof, this Court finds no error prejudicial to the appellant and, therefore, the judgment of the Trial Court is affirmed. Each assignment of error was reviewed and upon review the following disposition was made:

This cause comes to this court on appeal from a judgment of the Common Pleas Court.

The plaintiff-appellant brought an original action, labeled "petition", in the Court of Common Pleas naming the three trustees for Bainbridge Township and the Zoning Inspector for Bainbridge Township as defendants.

In said petition the appellant alleged that the township trustees of Bainbridge Township, contrary to a recommendation of the Bainbridge Zoning Commission, had rezoned property owned by the appellant from commercial to residential.

Appellant contends that said zoning resolution is unconstitutional and prayed for injunctive relief in the form of an order restraining the defendants from enforcing said zoning resolution and appellant further alleged damages in the amount of $800.00.

On February 13, 1969 the defendants-appellees filed a demurrer to the petition of the appellant which was overruled by the Common Pleas Court on April 2, 1969.

An answer was filed by the appellees on April 19, 1969 and it was set for hearing on the merits for September 27, 1972 at which time an oral motion was made by appellees for dismissal of the plaintiff's petition on the ground that the court was without jurisdiction to hear the case.

On October 11, 1972 appellees' motion to dismiss for want of jurisdiction was granted by the trial court.

It is from the trial court judgment of dismissal that an appeal has been brought to this court.

The pleadings in the cause now before this court clearly indicate that appellant, by filing his petition, sought to have the Common Pleas Court declare the zoning resolution, changing the zoning upon his property in Bainbridge township from commercial to residential, unconstitutional.

It is also clear from said pleadings that the cause now before this court was not brought before the Common Pleas Court as an appeal from the legislative act of the Board of Township Trustees of Bainbridge Township pursuant to Chapter 2506 of the Revised Code of Ohio since the action was directly filed as an original action in the Court of Common Pleas.

The action of the Board of Township Trustees in amending a zoning regulation is a legislative action and does not fall under the provisions of Section 2506.01, Revised Code, providing for appeals to the Court of Common Pleas from final orders of administrative bodies (*Tuber v. Perkins*, 6 O. S. 2d 155).

However, it is the law of Ohio that the question of constitutionality of a zoning resolution may be raised under Chapter 2506 of the Revised Code of Ohio by applying for a permit for a commercial use in said residential zone, appealing the refusal of the zoning inspector to grant such a permit to the Board of Zoning Appeals, and appealing, pursuant to Chapter 2506 of the Revised Code of Ohio, the refusal of the Board of Zoning Appeals to grant his appeal from the action of the zoning inspector. In such appeal to the Common Pleas Court, the question of constitutionality of the zoning resolution in question could properly be raised (*Shaker v. Coventry, Espy v. Village of Montgomery*, 30 O. App. 2d 65).

However, the suggested procedure for determining the constitutionality of the zoning resolution in question was not followed in this case and therefore the principle set forth above are not applicable.

The appellant brought an original action in the Common Pleas Court in the form of a petition for injunction and damages to raise the question of the constitutionality

of the zoning resolution passed by the township trustees changing the permitted use of appellant's property from commercial to residential.

Although not styled as such, appellant's petition before the Common Pleas Court was, in essence, a petition for a declaratory judgment asking the court to find that the zoning resolution in question was unconstitutional and to assess damages as a result thereof, a second method to raise the question of constitutionality of a zoning resolution if such an action is otherwise possible.

An action for a declaratory judgment is an alternative remedy to other remedies, such as an appeal pursuant to Chapter 2506 of the Revised Code of Ohio as outlined above.

Therefore, the fact that the appellant had not filed an application for a zoning permit and pursued his remedy of appeal pursuant to Chapter 2506 is not fatal to his petition for declaratory judgment filed with the trial court.

However, an action for a declaratory judgment will not lie unless there is an actual controversy or a justiciable dispute between the parties (*Moskowitz v. Federman*, 72 O. App. 149), and persons are not entitled to litigate questions which may never affect them to their disadvantage (*Driskill v. Cincinnati*, 66 O. App. 372).

The general rule is that a court under a declaratory judgment proceeding does not have the right to determine whether a statute, ordinance, or regulation is abstractly valid or invalid. In other words, before such a determination will be made there must be a justiciable controversy. (*Hammontree v. Hawley*, 40 O. L. Abs. 483).

Therefore, a petition seeking to have an ordinance declared invalid which fails to plead any facts which would

give rise to a disputed right-duty relation between the parties and thereby place the plaintiff in a position of peril or insecurity, is deficient (*Driskill v. Cincinnati, supra*).

In the instant case the petition filed by the appellant in the Common Pleas Court alleges that the zoning resolution is unconstitutional in that it was secured without notice to the appellant as to the meeting of the planning commission; in that the said trustees failed to honor precipe filed by appellant for witnesses to be produced at the October 7, 1968 hearing upon said resolution; that said zoning resolution in the text thereof was improperly described in the notice of public hearing; in that because of topography and flooding conditions of the premises under the Chagrin River the said resolution requiring only the residential development is unreasonable, arbitrary, and is a confiscation of said premises.

The petition of the appellant does not allege that there is a justiciable controversy between the parties because he wishes to use the property described in the petition for commercial purposes and can no longer do so because of the change in the permitted use of said property from commercial to residential.

In other words, the appellant has failed to allege in his pleading any facts which would give rise to a disputed right-duty relation between the parties and thereby place the appellant in a position of peril or insecurity.

It may be that the appellant could allege facts from which the trial court would have had to find that there was a justiciable controversy between the parties which would have made the question of the constitutionality of the zoning resolution a proper subject for a declaratory judgment action in the Common Pleas Court, but the peti-

tion in the instant case does not allege such a justiciable controversy.

Accordingly, the judgment of the trial court dismissing appellant's cause of action for want of jurisdiction is affirmed.

/s/ ROBERT E. COOK
Judge

JONES, *P.J.*
HOFSTETTER, *J.*, concur.

JUDGMENT ENTRIES OF OHIO SUPREME COURT

(February 1, 1974)

No. 73-947

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS

JERRY CHVOSTA,
Appellant,

vs.

LLOYD ADAMS, *et al.*,
Appellees.

APPEAL FROM THE COURT OF APPEALS FOR GEAUGA COUNTY

This cause here on appeal as of right from the Court of Appeals for Geauga County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Geauga County for entry.

* * * * *

(Caption as above)

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR GEAUGA COUNTY TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

JUDGMENT ENTRY OF THE COURT OF COMMON PLEAS

(Filed January 8, 1974)

Case No. 73-M-505

COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

JERRY CHVOSTA,
Plaintiff,

v.

TOWNSHIP OF BAINBRIDGE, *et al.*,
Defendants.

RULING OF THE COURT AND JUDGEMENT

The Relator has alleged essentially the same cause or causes of action herein as in Case No. 19029, Court of Appeals #555. It is true that he has asked for more damages,

for Mandamus, and that he has inserted several paragraphs of superfluous, scurrilous and irrelevant material (e.g. paragraphs 1, 4, 7, 10) but he has alleged no new non-feasance or malfeasance.

The trustees were acting in their official capacity and relator's allegation that they were acting individually does not make it so. There is not one new fact alleged to support such an allegation.

The complaint, "does not allege that there is a justiciable controversy between the parties because he wishes to use the property in the petition for commercial purposes and can no longer do so because of the change in the permitted use of said property from commercial to residential." (11th District Court of Appeals, #555, 16 July 1973)

The complaint herein being in essence the same as *Case No. 555, supra* there is no need to grant the continuance so tardily requested and there is need to grant respondent's Motion to Dismiss.

/s/ ROBERT B. FORD
Judge

JUDGEMENT

Respondent's Motion to Dismiss for failure to state a cause of action is granted at Relator's costs.

/s/ ROBERT B. FORD
Judge

JUDGMENT ENTRY OF THE COURT OF APPEALS

(Filed October 24, 1974)

Case No. 601

COURT OF APPEALS OF OHIO
ELEVENTH DISTRICT, COUNTY OF GEAUGA

JERRY CHVOSTA,
Appellant,

vs.

TOWNSHIP OF BAINBRIDGE, *et al.*,
Appellees.

JUDGMENT ENTRY

This cause came on to be heard upon the Record in the Trial Court, and was briefed and argued by counsel for the parties.

Upon consideration whereof, this Court finds no error prejudicial to the appellant and, therefore, the judgment of the Trial Court is affirmed. Each Assignment of Error was reviewed by the Court and disposed of as set forth in this Court's Announcement of Decision, of earlier date, which is incorporated herein by reference.

It is ordered that appellee recover of appellant the costs herein taxed.

This Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Trial Court to carry this judgment into

execution. A certified copy of this Entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

/s/ GEORGE M. JONES
/s/ EDWIN T. HOFSTETTER
Judges

DECISION OF THE COURT OF APPEALS

(Dated September 16, 1974)

Case No. 601

COURT OF APPEALS OF OHIO
ELEVENTH DISTRICT, COUNTY OF GEAUGA

JERRY CHVOSTA,
Appellant,
vs.
TOWNSHIP OF BAINBRIDGE, *et al.*,
Appellees.

ANNOUNCEMENT OF DECISION

This cause came on to be heard upon the record in the Trial Court, and was briefed and argued by counsel for the parties. Upon consideration whereof, this Court finds no error prejudicial to the appellant and, therefore, the judgment of the Trial Court is affirmed. Each assignment of error was reviewed and upon review the following disposition was made:

On October 10, 1973, Jerry Chvosta filed a Complaint with the Clerk of the Common Pleas Court of Geauga

County, Ohio. The primary relief sought was equitable in nature . . . an injunction. It was Mr. Chvosta's request that the Bainbridge Township Trustees and the Bainbridge Township Zoning Inspector be enjoined from enforcing, in the future, an alleged unconstitutional resolution concerning zoning which affected his property. He also requested a writ of mandamus to order those persons to strike resolution from the zoning resolutions. On the same basis, money damages were sought.

A hearing was had on the Complaint which was followed by a Court order denying a temporary injunction. Then the defendants-respondents filed a motion to dismiss the Complaint in its entirety. This motion was granted on January 8, 1974.

> "Respondents' Motion to Dismiss for failure to state a cause of action is granted at Relator's costs."

The basis for Judge Ford's judgment is taken directly from this Court's order in disposing of a previous appeal involving the same parties and subject matter, i.e.: the Complaint did not allege a justiciable controversy. Upon review of the pleadings of the prior case (No. 555, Court of Appeals, Geauga County, Ohio) and the captioned case, it does in fact appear that they are substantially the same as to parties and subject matter. For that reason, none of the errors are well taken for the reasons stated by this Court in Case No. 555. (For convenience of counsel we are attaching a copy of this Court's decision in prior Case No. 555).

Judgment affirmed.

GEORGE M. JONES
Presiding Judge

HOFSTETTER, J., COOK, J., Concur.

JUDGMENT ENTRIES OF OHIO SUPREME COURT

(April 11, 1975)

No. 74-1107

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS

JERRY CHVOSTA,
Appellant,

vs.

TOWNSHIP OF BAINBRIDGE, *et al.*,
Appellees.

APPEAL FROM THE COURT OF APPEALS
FOR GEAUGA COUNTY

This cause here on appeal as of right from the Court of Appeals for Geauga County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Geauga County for entry.

* * * * *

(Caption as above)

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR GEAUGA COUNTY TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

ORDER OF OHIO SUPREME COURT DENYING REHEARING

(April 11, 1975)

No. 74-1107

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS

JERRY CHVOSTA,
Appellant,

vs.

TOWNSHIP OF BAINBRIDGE, *et al.*,
Appellees.

REHEARING

It is ordered by the Court that rehearing in this case is denied.